THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. 36 of 2011

Sri Parasuram Sarkar,
S/O. Late Thakurdhan Sarkar
of Village & P.O. – Maynama,
P.S. – Chailengta,
District – Dhalai Tripura.

……..… *Appellant*

- Vs. –

1. Sri Gautam Banik,
   S/O Sri Upendra Banik
   of Village & OP – Manughat,
   P.S. – Manu, District – Dhalai Tripura.
   (Owner of the vehicle No.TR-01B-1548)

2. The United India Insurance Company Ltd.,
   Agartala Branch, Ganaraj Chowmohani,
   Old Thana Road, P.O. – Agartala, P.S. East Agartala,
   District – West Tripura.
   (Insurer of the Vehicle No.TR-01B-1548).

……..… *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	:	Mr. S. Bhattacharjee, Advocate.
For the respondent No.2.	:	Mr. P. Gautam, Advocate.
Date of hearing & delivery of Judgment & order	:	08.07.2015.
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

This appeal by the claimant has been filed for enhancement of compensation is directed against the award dated

19.01.2011 delivered by the learned Motor Accident Claims Tribunal (Court No.3), West Tripura, Agartala in Case No. T.S. (MAC) 281 of 2008 whereby, he awarded a sum of Rs.4,15,000/- to the claimant under the following heads:-

Pain & sufferings	– Rs.	15,000/-
Loss of income	– Rs.	9,000/-
Cost of treatment	– Rs.	8,000/-
Future loss of income	– Rs.	3,78,000/-
Miscellaneous expenses	– Rs.	5,000/-
Total -	Rs.	4,15,000/-

2. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

3. In the present case, the undisputed facts are that the claimant remained admitted in hospital for 4 days. He has suffered a permanent injury and as per the disability certificate his disability is 70%. However, this disability is not 70% in relation to the body, but is 70% in relation to the arm because the injury was only caused to the arm.

4. As far as pecuniary expenses are concerned, the first question which has to be decided what was the income of the claimant. According to the claimant, he was a skilled labourer being a Rajmistri (Mason). He claimed that he was earning Rs.200/- per day. This has been stated by the P.W.2 also, who stated that he used to regularly employee the petitioner @ Rs.200/- per day. When income is taken on daily basis, this Court must also taken into consideration the fact that at times the person may not work for other causes and therefore though I agree with the claimant that he may have been earning Rs.200/- per day, but this income would not be very regular and there would be some off days also and therefore I assess the monthly income at Rs.5,000/- per month instead of Rs.6,000/-.

5. The learned Tribunal has awarded Rs.8,000/- as cost for medicines on the basis of the cash memos. In such a case some cash memos may not be kept and I award **Rs.10,000/-** under this head.

6. The claimant has not been awarded any amount for attendant charges. He remained in hospital for 4/5 days and even if 2 attendants are required round the clock and the cost of one attendant is taken at Rs.250/- per day, the cost of 2 attendants for 5 days works out to **Rs.2,500/-.** The claimant was a Masson and has rightly held by the learned Tribunal he could not work for 3 months. Therefore, his loss of income is assessed at **Rs.15,000/-.**

7. Next comes the question of loss of future income. While assessing future income in ***Sarla Verma and others vs. Delhi Transport Corporation and another : (2009) 6 SCC 121***, the Apex Court held that where the deceased or injured is below the age of 40, 50% should be added to his salary to take into consideration the future prospects. Therefore, his income is taken to be Rs.3,750/- per month. This brings us to the most important question as to what is the loss of earning capacity. The learned Tribunal held that since the disability was 70%, the loss of earning capacity would be 70%. On the other hand, Mr. Suman Bhattacharjee, learned counsel for the appellant contended that the claimant was a day labourer and his case the disability would be 100%.

8. I have gone through the disability certificate and I find that the 70% disability is to one arm and it is wrongly been treated

to be 70% disability of the entire body. This Court will have to assess what is the loss of earning capacity. The claimant was a Mason and would require to work with both arms. He cannot work efficiently if one of his arms is lost. However, he can still do some work. His efficiency may come down, but he can carry on the work because his legs are absolutely O.K. His left arm works to 30% and the right arm is absolutely O.K. Keeping all factors into consideration, I assess the loss of earning capacity at 50% or Rs.3,750/- per month i.e. Rs.45,000/- a year and multiplier of 15 is applied and the compensation under this head works to **Rs.6,75,000/-.**

9. Now comes the question as to the non-pecuniary damages. The claimant has been awarded **Rs.50,000/-** for pain and suffering, which is reasonable. However, the claimant has not been awarded anything for future discomfort in life and loss of amenities in life. The claimant is crippled for the rest of his life and therefore, I award him **Rs.50,000/-** for loss of amenities and future discomfort in life.

Therefore, the total compensation works out to **Rs.8,02,500/-** (Rs.10,000/- + Rs.2,500/- + Rs.15,000/- + Rs.6,75,000/- + Rs.50,000/- + Rs.50,000/-) (Rupees Eight lakh two thousand five hundred).

10. In view of the above discussion, the appeal is allowed and the award of the learned Tribunal is modified and the compensation is enhanced from Rs.4,15,000/- to **Rs.8,02,500/-,** i.e. by **Rs.3,87,500/-** (Rupees Three lakh eighty seven thousand five hundred). On this amount, the claimant shall also be entitled to interest @ 9% per annum from the date of filing the claim petition till payment/deposit of the awarded amount. Therefore, the insurance company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon in the Registry of this Court within 3(three) months from today. Obviously, the insurance company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

11. The appeal is disposed of in the aforesaid terms.

12. Send down the lower court records forthwith.

CHIEF JUSTICE

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